

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

John Wayne Zink
SSN XXX-XX-7737

Carrie Lynn Zink
SSN XXX-XX-7865

Debtor.

CASE NO. 04-31521 GFK

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Washington Mutual Home Loans (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 25, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 20, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 14, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on March 15, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001.

This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$274,500.00, as evidenced by that certain mortgage deed dated October 9, 2001, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated October 9, 2001, executed by John W. Zink and Carrie L. Zink fka Carrie L. Hanten, husband and wife, recorded on November 13, 2001, as Document No. 452359, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Dakota County, Minnesota and is legally described as follows to-wit:

Lot Thirteen (13), Block Two (2) in Salem Hills Farm Second Addition, commonly known as 6411 Beckman Court, Inver Grove Heights, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of October 6, 2004, Debtor is delinquent in the making of monthly payments as required for the months of July, 2004 through October, 2004, inclusive, in the amount of \$2,255.10 each; accruing late charges of \$1,109.64 and attorneys fees and costs of \$675.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be terminated so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 6th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

[illegible]

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**OFFICE OF THE REGISTRAR OF TITLES
DAVID GILBERT, M.D., REGISTRAR**

DOCS 140

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THE UNIVERSITY OF CHICAGO PRESS

RE - CONSIDERATION

NOTES — **NOTES**

11/19/85

CHURCH **ITEM**

22

DO NOT REMOVE



Leather Field Agency, Inc.
20 West 77th Street

Based Above This Line For Recording Data

COMPLAINT TITLE NUMBER 31-4-2

Gibraltar Tele Agency
31441

00-3235-000000000-2

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 19, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means the document, which is dated October 9, 2001, together with all Riders to this document.

(B) "Sonowon" is JOHN W. SURE AND CAROL L. SURE AND CAROL L. SURE, MOTHER AND WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is Washington Mutual Bank, F.A. a Federal association.
Lender is a bank organized and existing under the laws
of United States of America. Lender's address is:

Lender is the mortgagee under this Security Instrument.

(2) "Note" means the promissory note signed by Borrower and dated December 2, 2001.
This Note states that Borrower owes Lender Two Hundred Seventy-Four Thousand Five
Hundred & 00/100

Dollars (\$): \$ 274,500.00 plus interest. Borrower has promised to pay this debt in regular periodic payments and to pay the debt in full not later than November 1, 2021.

(C) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(f) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under the Security Instrument, plus interest.

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Page 3 of 3

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OCT 31 2001

**EMERY COUNTY
TREASURER-LECTOR****EXHIBIT**

55-2535-005536604-2

(K) "Riders" means all riders to this Security Instrument that are attached by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Rate Improvement Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Other(s) (specify): | | |

(L) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(M) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(N) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(O) "Isotopic Isomers" means those items that are described in Section 3.

(P) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds, whether by way of judgment, settlement or otherwise, paid by any third party other than insurance proceeds paid under the coverages described in Section 3; (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentation of, or violations as to, the value and/or condition of the Property.

(Q) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(R) "Periodic Payments" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(S) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 2000), or they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the loan does not qualify as a "federally related mortgage loan" under RESPA.

(T) "Successors in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note under this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note; and (iii) the performance of all agreements of Borrower to pay fees and charges arising out of the Loan whether or not herein set forth. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's

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successors and assigns, with power of sale, the following described property located in St. Louis County, Minnesota:
LOT 10 IN THE COUNTY OF ST. LOUIS, STATE OF MINNESOTA AND DESCRIBED AS:
LOT 10 (10), BLOCK TWO (2) IN SALEM HILLS PARK SECOND ADDITION, (THIRTEEN
THIRTEEN AS: 6411 SECTION AVE. LOT 10 - OVER ABOVE RIGHTS, MINNESOTA,

which currently has the address of 6411 SECTION AVE.
ST. LOUIS, MINNESOTA 55117 ("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, encumbrances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one of more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check; bank check; treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payment is insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If cash periodic

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

John Wayne Zink
SSN XXX-XX-7737
Carrie Lynn Zink
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CASE NO. 04-31521 GFK

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of October 6, 2004, Debtor is delinquent for monthly payments for the months of monthly payments as required for the months of July, 2004 through October, 2004, in the amount of \$2,255.10 each; accruing late charges of \$1,109.64 and attorneys fees and costs of \$675.00.

2. Debtor has failed to make any offer of adequate protection.

The property is also subject to another lien in favor of Prime Security Bank in excess of \$21,100.00.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

. . .

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 6th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

John Wayne Zink
Carrie Lynn Zink

AFFIDAVIT OF PETITIONER

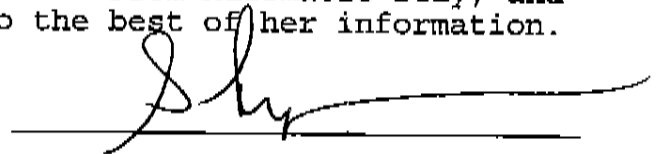
Debtors

Chapter 7, Case No. 04-31521

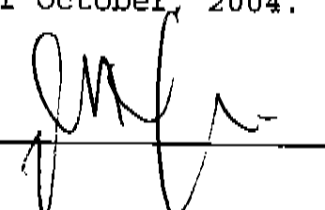
STATE OF GEORGIA

COUNTY OF FULTON

Sonya Lyons, being first duly sworn, deposes and states she is authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that she has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her knowledge to the best of her information.



Subscribed and sworn to before me this
10/4/04 day of October, 2004.

Notary Public 



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DISTRICT OF MINNESOTA**

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SSN XXX-XX-7737
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CASE NO. 04-31521 GFK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on October 6, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Sonya Lyons, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

John W. Zink
Carrie L. Zink
6411 Beckman Court
Inver Grove Heights, MN 55077

Washington Mutual Home Loans
c/o McCalla, Raymer et al
Bankruptcy Department
1544 Old Alabama Road
Roswell, GA 30076

David G. Keller
Grannis & Hauge, PA
1260 Yankee Doodle Rd Ste 200
Eagan, MN 55121

Nauni Jo Manty
Rider, Bennett, LLP
333 South 7th St Ste 2000
Minneapolis, MN 55402

Prime Security Bank
201 South Main
Carlstad, MN 56732

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55145

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 6th day of October, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

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SSN XXX-XX-7737
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Debtor.

ORDER

The above entitled matter came on for hearing upon motion of Washington Mutual Home Loans (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 25, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated October 9, 2001, executed by John W. Zink and Carrie L. Zink fka Carrie L. Hanten, husband and wife, recorded on November 13, 2001, as Document No. 452359 covering real estate located in Dakota County, Minnesota, legally described as follows, to-wit:

Lot Thirteen (13), Block Two (2) in Salem Hills Farm Second Addition, commonly known as 6411 Beckman Court, Inver Grove Heights, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court